IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of Case

Writ Petition No. 700 (M/B) 2003

Date of decision: 5.8.03

For the approval of:

Hon'ble Chief Justice S.H. Kapadia

Hon'ble Mr. Justice P.C. Verma, J.

- Whether the order/judgment should be sent to the reporters for reporting? (No)

- Whether the reporters be allowed to see the judgment? (Yes)

(N.C. Melkani)
P.S.

C.J.'s Court

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 700 (M/B) 2003

Girish Samwal S/o late Govind Ram Samwal]
Resident of Basant Bihar, New Tehri.] --- Petitioner

Vs.

1. District Magistrate, Tehri Garhwal,]
2. Executive Officer, Nagar Palika Parishad]
   Tehri Garhwal.]
3. Prabhari Adhikari Nagar Palika Parishad,]
   Tehri Garhwal..] --- Respondents

Sri P.S. Adhikari]
&
Sri B.S. Adhikari Advocates for the Petitioner.]

Chief Standing Counsel for the Respondents.]

Coram: Hon'ble S.H. Kapadia, C.J.,
& Hon'ble P.C. Verma J.

Date: 5th of August 2003:

ORAL JUDGMENT: [Per Hon'ble S.H. Kapadia,C.J.]

1. By this writ petition, petitioner seeks to challenge memo issued by respondent No.3. It is a stop-work-notice. The facts of the case are as follows:-

2. Petitioner was allotted one room on rental basis in a building owned by Nagar Palika Parishad, Tehri Garhwal. The name of the building was 'Rain Basera Bhawan'. It was a rest house. It was an inn. Petitioner is a journalist. He is working in 'Dainik Jagran'. On 3rd April 2002 he applied to Nagar Palika Parishad for allotment of open space on the roof of the building to put up a construction of the size equal to the room. In April 2002 there was the Administrator (respondent no.1) in-charge of the affairs of t he Municipality, 'Rain Basera Bhawan' was the property of the Municipality. The elected body came to be constituted on 8th February 2003. However, before

8th February 2003, the Administrator sold 12 square meters of open space on the roof for Rs. 30,000/- to the petitioner for constructing a room. There were four tenancies in 'Rain Basera Bhawan'. The sale-deed was executed on 16th March 2002. After taking possession of the open space, petitioner started constructing a room. By the impugned memo the petitioner is asked to stop the work of construction, hence the petition.

3. Mr. Adhikari, learned counsel for the petitioner submitted that the petitioner had purchased the above space on the roof by paying Rs. 30,000/-. That, the rate was the fair rate. That, the sale-deed was executed on a stamp paper of Rs. 100/- and, therefore, the petitioner was the owner of the open space on the roof and he was entitled to construct the room as per the sale-deed with the letter of allotment. He has alleged malafides against the respondent No.1. He, therefore, submitted that the stop-work-memo be set-aside.

4. In this case, the Court made enquiries at the time of the hearing of the petition as to, on what basis and under which provision of law a public property belonging to the Municipality was offered for sale. The Court wanted to know under what provision the sale-deed was executed by the Administrator. In this connection, it is important to note that the elected body came to be constituted on 8th February 2003 whereas, the sale-deed was executed by the Administrator on 10th June 2002. It is also important to note that there was no public auction of the said property. No provision of law has been shown to us in which a public property was put to sale without going through the procedure of public auction. Even the sale-deed has not been registered. In the circumstances, we do not wish to interfere under writ jurisdiction.

5. Accordingly, the writ petition stands dismissed, with cost in the cause.

6. Mr. Adhikari, learned counsel for the petitioner seeks stay of the order for a period of three weeks. In facts and circumstance of the case, the status quo as of today will continue for three weeks from 5th August 2003. On expiry of the period of three weeks, the

Nagar Palika Parishad, Tehri Garhwal will take steps to demolish the existing construction after giving notice to the petitioner.

(P.C. Verma, J.) (S.H. Kapadia, C.J.)

NCM: